

Subchapter K
Hazardous Substance Facilities Assessment and Remediation

Effective April 14, 1997
§§335.341 - 335.352

§335.341. Purpose and Scope.

(a) The purpose of this subchapter is to establish an assessment and remediation program to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The provisions of this subchapter supplement and therefore should be read in conjunction with the provisions of Subchapter F of the Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon Supplement), §§361.181 et. seq. as amended, herein referred to as the Act.

(b) This subsection describes the TWC procedures for identifying, proposing, and listing facilities on the State Registry.

(1) Prior to proposing a facility for inclusion on the State Registry, the executive director shall first determine whether any potential endangerment to public health and safety or the environment at a facility can be resolved by the present owner or operator under the federal Resource Conservation and Recovery Act, 42 United States Code Annotated §6901 et seq. (1976), as amended.

(2) If the potential endangerment cannot be fully resolved by the present owner or operator, then the executive director shall determine whether the potential endangerment can be resolved by voluntary cooperation of some or all of the potentially responsible parties (PRPs) identified in the Act, §361.271, pursuant to an agreed administrative order issued by the commission. If it can be cleaned up pursuant to an agreed administrative order, then it shall not be proposed for listing.

(3) If, after reasonable efforts, the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of these approaches, the executive director shall evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code Annotated, §9601 et seq. (1980), as amended.

(4) The executive director shall determine whether the facility is eligible for proposed listing on the State Registry only if, based on information available to the executive director, the facility is not eligible for inclusion on the federal National Priorities List.

(5) If the executive director determines that the potential endangerment to public health and safety or the environment can be resolved by any of the approaches described in subsections (b)(1)-(3), then the site will not be proposed for listing on the State Registry. Notice of the approach selected to resolve the

apparent endangerment to public health and safety or the environment and the fact that such action is being taken in lieu of listing the facility on the State Registry shall be published in the Texas Register.

§335.342. Definitions.

Definitions set forth in the Act that are not specifically included in this section shall also apply. The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

Agreed order or agreed administrative order - An administrative order issued by the commission and agreed to by one or more PRPs for the purpose of settling potential liability for the remedial investigation/feasibility study and/or remediation of a facility proposed for listing, or listed on, the State Registry.

Divisible - That the hazardous substance(s) released or threatened to be released are capable of being managed separately under a remedial action plan.

Facility -

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer public-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft); or

(B) any site or area where a hazardous substance has been posted, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use or any vessel.

Hazard ranking system - The scoring system developed by the United States Environmental Protection Agency as set out in 40 Code of Federal Regulations Part 300, Appendix A, as amended.

Good faith offer - A written proposal by one or more PRPs which is not contingent on participation of other PRPs which, in the judgment of the executive director, will

(A) in the case of a good faith offer to fund or perform a remedial investigation/feasibility study or other similar study, effectively determine the nature and extent of the release or threatened release of hazardous substances and its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility; or

(B) in the case of a good faith offer to fund or perform a remedial action, effectively mitigate or minimize damage to, and provide adequate protection of, the public health and safety or the environment.

Hazardous waste disposal fee fund - The fund described in the Act, §361.133.

Imminent and substantial endangerment - A danger is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. A danger is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.

Non-participating PRPs - Potentially responsible parties who

(A) are unwilling or unable to join in the making of a good faith offer;

(B) are unwilling or unable to become a party to an agreed order to perform an RI/FS, similar study, or remedial action; or

(C) intentionally violate the terms of an agreed order so as to substantially interfere with the achievement of the purposes of the agreed order.

Oversight costs - All administrative costs and costs for technical and legal services incurred by commission personnel, or agents or contractors for the commission, incurred in the oversight of the RI/FS and remedial action, plus all such costs incurred in verifying compliance by PRPs with the terms of any agreed order which may be issued.

Potentially responsible party (or PRP) - A person potentially responsible for solid waste as defined in the Act, §361.271.

Remedial investigation/feasibility study (or RI/FS) -

(A) An investigative study of the entire facility designed to determine the nature and extent of a release or threatened release of hazardous substances and, as appropriate, its impact on air, soils, ground-water, and surface water, both within and beyond the boundaries of the facility in accordance with the requirements of §335.348 of this title (relating to General Requirements for a RI/FS); and

(B) A study which describes and evaluates a set of remedial action alternatives for effectively mitigating or minimizing damage to, and for providing adequate protection of, the public health and safety or the environment in accordance with the requirements of §335.348 of this subchapter.

Remedial action plan - A detailed plan for the design, construction, and long-term operation and maintenance of the remedial action agreed to by the commission.

Substantial change in use - A physical or functional alteration of a facility, the effect of which is to interfere significantly with a proposed or ongoing RI/FS or similar study or to expose the public health and safety or the environment to a significantly increased threat of harm. The term includes, but is not limited to, actions such as the erection or razing of a building or other structure at the facility, the use of a facility for agricultural production, the paving over of a facility, the creation of a park or other public or private recreational use on the facility, and any other alteration of the site or activity which could interfere with the performance of a RI/FS or remedial action.

State superfund hazard ranking system - The scoring system used by the executive director for determining the relative priority for an RI/FS or remedial action needed at a facility.

§335.343. Ranking of Facilities.

(a) The relative priority for action needed at a facility investigated by the executive director for possible listing on the State Registry is based on a State Superfund Hazard Ranking System (HRS). The State Superfund HRS is a methodology designed to determine a numerical score for a facility based on the judgment of the executive director concerning various factors which may impact the public health and safety or the environment.

(b) Upon appropriate investigation by the executive director, a facility will be assigned a State Superfund HRS score. A facility may be proposed for listing on the State Superfund Registry if it is assigned a state Superfund HRS score 5.0 or greater.

(c) Facilities with the highest State Superfund HRS score shall receive the highest priority for remedial Federal action and state-funded cleanup, unless a situation described in the Act, §361.191 warrants more immediate action.

(d) The relative priority for action at facilities listed on the State Registry will be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

§335.344. Delisting and Modifications.

(a) Any Potentially Responsible Party (PRP) of a facility listed or proposed for listing on the State Registry or any interested person may request the executive director to delete such facility from the registry, modify the facility's priority ranking within the registry, or modify any information regarding such facility by submitting a written statement setting forth the grounds of the request. The PRP or interested person shall submit to the executive director any information as may be reasonably required to enable the executive director to further evaluate the facility including, but not limited to, information on all factors used to develop a state superfund HRS score and to make a determination on the request. The executive director may also initiate the delisting procedures described in this section.

(b) The commission shall hold a public meeting to receive comment. This meeting is not a contested case hearing within the meaning of Texas Government Code, Chapter 2001. This meeting shall be held upon requests filed with or initiated by the executive director under subsection (a) of this section. At least 30 days prior to the date set for the meeting, notice shall be provided by first class mail to all other PRPs and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request, if any, shall bear the cost of publication of the notice.

(c) In making a determination under subsection (a) of this section, the executive director or the commission will consider the following:

(1) the extent to which the facility has been remediated under the terms of the remedial action plan agreed to by the executive director;

(2) what further action, if any, is appropriate;

(3) whether the release no longer poses an imminent and substantial endangerment to public health and safety or the environment and, therefore, taking further action is not appropriate;

(4) whether, because of the nature of the remedial action implemented at the facility, it is not yet feasible to make a determination that the remedial action has effectively remediated the release or threat of release of hazardous substances; or

(5) whether the site has been remediated under the voluntary cleanup program as set out in 30 TAC Chapter 333 of this title (relating to Voluntary Cleanup Program).

(d) No requests for the delisting of a facility from the state registry or requests to modify information about a facility eligible for listing on the registry will be granted unless, at a minimum, the facility has been investigated under the terms of an RI/FS or other similar study approved by the executive director.

Adopted March 19, 1997

Effective April 14, 1997

§335.345. Requests for Information or Production of Documents.

(a) The executive director may submit requests for information and requests for production of documents as authorized by the Act, §361.182 of the Act to any person who has information or documents which in the executive director's opinion are necessary for the adequate investigation or remediation of a facility listed on the Registry or proposed for listing on the Registry. If the requested information or documents are not produced in a timely manner, the executive director may petition the commission to issue an order directing compliance with the requests for information or production of documents. The executive director shall serve a copy of the petition on the person to whom the request for information or production of documents was directed at least 20 days prior to the scheduled date of commission action on the petition. The person to whom the request for information or production of documents was directed may appear before the commission and present evidence and argument on the petition or in support of a claim asserted under subsection (b), or the commission may refer the matter to the office of hearings examiners for the taking of evidence.

(b) Information or documents provided to the executive director in accordance with this section are presumed to be public records except to the extent that a showing satisfactory to the commission is made that the information or documents would divulge trade secrets if made public. The commission shall deem the information or documents to be confidential and not subject to public disclosure if such a showing is made. Upon request, confidential information and documents supplied to the executive director will be returned to the person supplying the information or documents after it has served the purpose for which it was requested by the executive director.

§335.346. Removal Actions and Preliminary Site Investigations.

(a) For facilities listed on the Registry or proposed for listing on the Registry, no person may perform any partial or total removal activities at such facility or conduct on-site sampling, testing, or preliminary investigations of any type at such facility without the advance written authorization of the executive director after notice and opportunity for comment to all other potentially responsible parties.

(b) To expedite the executive director's consideration of a proposal to conduct removal activities or preliminary investigations at a facility, the person proposing such actions should submit to the executive director a workplan describing the precise nature of the removal or investigation activities proposed, a safety and health plan and a QA/QC plan as well as a schedule for completing various subtasks identified in the workplan.

(c) Any authorization by the executive director to perform on-site testing, sampling, or preliminary investigations or partial or total removal activities at a facility does not constitute a finding or determination by the commission that such testing, sampling, or preliminary investigation constitutes an approved RI/FS or that the removal activities constitute the final remedial action. An authorization by the executive director to perform any partial or total removal activities also does not constitute a determination or finding by the

commission that any release or threatened release attributed to the removed materials is divisible as defined in the Act.

(d) Pursuant to the Act, §361.133(c) the executive director may use money in the Hazardous and Solid Waste Remediation Fee Fund for necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action. A necessary and appropriate aspect of any such removal or remedial action may be the construction of a fence as necessary to provide site security, and the taking and analysis of samples of potential hazardous substances, and potentially contaminated soils, surface water and groundwater.

§335.347. Financial Capability Determinations.

(a) The executive director will make a determination of whether a PRP is financially capable of participating in a facility investigation or remediation. Such a determination may be based on some or all of the following financial information:

- (1) audited financial statements;
- (2) federal or state income tax returns;
- (3) a PRP's gross and net income for each of the preceding three years;
- (4) a PRP's net worth for each of the preceding three years;
- (5) a PRP's current cash flow position;
- (6) a PRP's long-term liabilities;
- (7) the liquidity of a PRP's assets; and

(8) any other data which requested pursuant to 31 TAC §335.345 of this title (relating to Requests for Information or Production of Documents), which in the opinion of the executive director is relevant to a determination of the ability of the PRP to participate in a facility investigation or remediation.

(b) A determination by the executive director pursuant to this section shall be provided to all PRPs.

§335.348. General Requirements for a Remedial Investigations/Feasibility Study.

(a) Unless otherwise directed by the commission, a RI/FS or other similar study as approved by the TWC shall be completed before the executive director's selection of the remedial action, except for emergency removal actions and preliminary site investigations pursuant to §335.346 of this title (relating to Removal Actions and Preliminary Site Investigations).

(b) A similar study may be approved by the TWC as an appropriate alternative to the performance of a full RI/FS when necessary to avoid delay, to make more effective use of resources or when such similar study is sufficient to adequately characterize a site.

(c) The contents of the RI/FS, as approved by the commission, will depend on the particular circumstances of each specific facility. Under any RI/FS, however, sufficient information must be collected and evaluated to allow the commission to select an appropriate remedial action.

(d) A RI/FS may include the following, as appropriate to a particular facility, for the purpose of allowing the TWC to select an appropriate remedial action:

(1) investigations of surface water and sediments necessary to characterize hydrologic features such as surface drainage patterns, areas of erosion and sediment deposition, surface waters, floodplains and actual or potential hazardous substance migration routes within these areas. Properties of surface and subsurface sediments which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions shall be characterized.

(2) investigations to adequately characterize the vertical and areal distribution and concentrations of hazardous substances in the soils encompassing the facility. Properties associated with the soils which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions shall be characterized.

(3) investigations of hydrogeology and geology to adequately characterize the horizontal and vertical distribution and concentrations of hazardous substances in the ground water and the features which affect the fate and transport of those hazardous substances. This should include, but is not limited to, the physical properties and distribution of bedrock and unconsolidated materials, groundwater flow rate and gradient for contaminated and potentially contaminated aquifers, groundwater divides, areas of groundwater recharge and discharge, and location of public and private groundwater wells.

(4) information regarding local climatological characteristics which are likely to affect the hazardous substance migration such as: rainfall patterns; frequency of storm events; temperature variations; prevailing wind direction; and wind velocity.

(5) information to determine the impact or potential impact on the natural resources and ecology of the area such as sensitive environments, plant and animal species and other environmental receptors.

(6) descriptions of the location, quantity, horizontal and vertical extent, concentrations and sources of hazardous substances in disposal areas. Information on the physical and chemical characteristics and the toxicological effects of hazardous substances shall be provided, if available.

(e) In order to identify possible health problems associated with the "no action" remedial action alternative, a baseline public health evaluation will be conducted in accordance with the Environmental Protection Agency's Risk Assessment Guidance for Superfund - Volume 1: Human Health Evaluation

Manual or other equivalent EPA guidance document. The evaluation may not be required when the executive director determines that remediation standards are apparent and undisputed and adequately protective of human health and the environment.

(f) The number and types of remedial action alternatives to be evaluated shall take into consideration the particular characteristics and complexities of the facility. Development of remedial action alternatives shall include, at a minimum, the following:

(1) an alternative which involves the treatment of hazardous substances to health-based levels or the level of Best Demonstrated Available Technology (BDAT).

(2) an alternative consisting of containment of all hazardous substances either on-site or off-site.

(3) an alternative consisting of a combination of on-site and off-site containment.

(4) no remedial action.

(g) At a minimum, the following criteria will be used to evaluate each remedial action alternative:

(1) the extent to which the alternative mitigates long-term exposure of any residual contamination;

(2) the extent to which the alternative achieves remediation standards and complies with applicable federal, state and local regulations;

(3) the extent to which the alternative permanently and significantly reduces the volume, toxicity, and mobility of hazardous substances;

(4) the present value cost including the total costs of implementation and annual operation and maintenance costs;

(5) the extent to which local community concerns are addressed and whether implementation of the alternative would result in other adverse effects on the local community;

(6) other significant impacts on human health and the environment resulting from implementation of the remedial action alternative; and

(7) the technical merits of each remedial alternative relative to the other.

(h) A workplan for a RI/FS shall be submitted to the executive director for final review and possible modifications and shall include the following:

(1) a sampling and analysis plan covering all sampling activities to be undertaken pursuant to the RI/FS;

(2) a quality assurance/quality control plan to assure the integrity of all samples taken pursuant to the RI/FS;

(3) a health and safety plan to describe steps to be taken to assure the health and safety of all personnel engaged in implementing the RI/FS; and

(4) a schedule of implementation for all aspects of the RI/FS.

(i) Treatability studies may be required as necessary to provide information to evaluate remedial action alternatives.

(j) A report shall be prepared at the completion of the remedial investigation/feasibility study and submitted to the executive director for review, possible modification and final approval.

(k) In evaluating the acceptability of a RI/FS or similar study, the executive director may utilize published TWC and EPA technical guidance documents including, but not limited to, the documents set forth in Appendix II.

§335.349. General Requirements For a Remedial Action.

(a) Based on the proposals set forth in the feasibility study, the executive director shall select a remedial action. The selection of the remedial action shall be based on relevant information collected during the remedial investigation/feasibility study, or other approved study, as well as any other information available to the commission. The commission may select a final remedial action which incorporates elements from different remedial action alternatives as proposed in a RI/FS.

(b) Engineering documents submitted in connection with the remedial action will be required to demonstrate compliance with relevant cleanup standards, except as provided in the Act, §361.193. The scope of these documents will depend on the nature and complexity of the proposed remedial action and may vary from site to site.

(c) A remedial action plan shall consider the following factors if relevant to a particular facility, but shall not be limited to those factors, as follows:

(1) a design engineering report to include information for the development and review of construction plans and specifications;

(2) construction plans and specifications describing in detail the cleanup actions to be performed and prepared in conformance with currently acceptable engineering techniques and practices; and

(3) an operation and maintenance plan to assure effective and environmentally safe operations under normal and emergency situations.

§335.350. Defense to Liability and Claims of Divisibility.

(a) The burden of establishing that a PRP qualifies for any defenses to liability set forth in the Act, §361.275 or that a release is divisible as set forth in the Act, §361.276, lies with the PRP asserting such claim.

(b) A PRP must demonstrate to the executive director its entitlement to a defense or claim under the Act, §§361.275 or 361.276. The determination by the executive director of a PRP's request for limitation of liability under these sections of the Act is a discretionary act which does not entitle the PRP to an appeal to the commission or an adjudicatory hearing on such determination.

(c) The executive director will not consider claims of divisibility until a site has been adequately characterized by a RI/FS or other approved study.

(d) A determination by the executive director on a defense or claim asserted under the Act, §§361.275 or 361.276 shall have no res judicata or collateral estoppel effect on a PRP's ultimate liability for remediation of a facility as determined in subsequent commission proceedings or in district court.

§335.351. Settlement Agreements.

(a) General purpose. The Texas Water Commission (TWC) encourages potentially responsible parties (PRP) to enter into negotiated settlement agreements with the commission so that an effective cleanup of a State Superfund facility can be quickly implemented while at the same time resolving PRP's apparent liability for the facility. The goal of the executive director in negotiating PRP settlements is to obtain a complete investigation and cleanup of the facility by PRPs, or to collect from PRPs 100% of the commission's cost of performing a complete investigation and cleanup of the facility.

(b) Partial settlements. The commission may consider a settlement proposal for cleanup of less than 100% of a facility's cleanup activities or cleanup costs. Upon settling with cooperative parties, the commission will vigorously seek all remaining relief, including full cost recovery of monies expended from the Hazardous Waste Disposal Fee Fund, including penalties, damages, and interest where appropriate, as well as TWC oversight costs, from parties whose non-cooperation prevented the achievement of a complete settlement.

(c) Mixed funding. Mixed Funding means use of funds from federal, state, and private party sources, or any combination of those sources, to fund a timely response action. Mixed funding may be used in the following circumstances.

(1) In order to achieve an expeditious cleanup of a facility listed on the Registry, the commission may agree to reimburse parties to a settlement agreement from the Hazardous Waste Disposal Fee Fund, with interest, for certain costs incurred as a result of the timely implementation of the remedial

action plan that the parties agree to perform but which the commission agrees to finance. The commission may agree to utilize funds from whatever other federal or state source is available to the commission for the funding of a facility remediation.

(2) Mixed funding shall be provided only to PRPs whom the commission has found to be eligible and who have entered into an agreed administrative order with TWC. The agreed administrative order shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the hazardous waste disposal fee fund and the terms of agreement.

(3) A PRP must submit sufficient documentation, as requested by the executive director, to support its request for mixed funding.

(4) The commission's granting of a request for mixed funding does not diminish or alter the standard and scope of liability as set out in the Act. The commission will not approve mixed funding based solely on the grounds that a share of wastes at a site may be attributable to an unknown or financially non-viable party. In addition, the availability or the amount of any fund-financing for a particular site will not be dependant on consistency with any volumetric allocation.

(5) Good faith negotiations and early cooperation of settlers will be considered in mixed funding requests. Mixed funding for remedial actions would not be appropriate where the executive director did not receive a good faith offer for the participation of the PRPs in the completion of the remedial investigations/feasibility study.

(6) If a PRP is found to be eligible for mixed funding, the executive director shall make an initial determination regarding the amount of funding to be provided. This determination is solely within the discretion of the executive director and is not subject to adjudication in an administrative hearing or appeal to the commission. A determination of eligibility is not a funding commitment as actual funding will depend on availability of funds and approval of the commission.

(7) Where a remedial action has been completed at a facility pursuant to a mixed funding agreement, the hazardous waste disposal fee fund (the fund) shall be subject to an obligation for subsequent remedial actions at the same facility only to the extent that such subsequent actions are necessary by reason of failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures, or through payment by parties who were not signatories to the original agreement.

(d) De minimis settlements. The commission may reach a final settlement with a PRP for only a minor portion of the response costs at a facility if the conditions in either of the following subparagraphs (1) or (2) of this subsection are met.

(1) A PRP can demonstrate the following:

(A) the amount of the hazardous substances contributed by a particular PRP is minimal in comparison to the amounts of other hazardous substances at the facility; or

(B) the toxicity or other hazardous effects of the hazardous substances contributed by a particular PRP are minimal in comparison to the toxicity or other hazardous effects of other hazardous substances at the facility.

(2) The PRP can demonstrate that it:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) Paragraph (2) of this subsection does not apply if the PRP purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(e) Covenants not to sue.

(1) The commission may, in its discretion, provide any PRP with a covenant not to sue concerning any existing or future liability resulting from a release or threatened release of a hazardous substance addressed by a remedial action if each of the following conditions is met:

(A) the covenant not to sue is in the public interest as determined by criteria set forth in paragraph (2) of this subsection;

(B) the granting of the covenant not to sue would expedite a remedial action approved by the commission; and

(C) the PRP is in full compliance with the terms of any order issued by the commission for response to the release or threatened release concerned.

(2) In assessing the appropriateness of granting a covenant not to sue and in determining the appropriate legal scope of such a covenant, the commission shall consider whether the covenant is in the public interest on the basis of such factors as the following:

(A) the effectiveness and reliability of the remedial action, in light of other alternative remedies considered for the facility concerned;

(B) the nature of the environmental risks remaining at the facility;

- (C) the extent to which performance standards are included in the order or decree;
- (D) the extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility;
- (E) the extent to which the technology used in the response action is demonstrated to be effective;
- (F) whether the hazardous waste disposal fee fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility; and
- (G) whether the remedial action will be carried out, in whole or in significant part, by the PRPs themselves.

(3) A covenant not to sue shall be subject to the satisfactory performance by the PRP of its obligations under any order issued by the commission for response of remedial actions to address the release or threatened release of a hazardous substance at the facility. A covenant not to sue concerning future liability for remediation of the facility shall not take effect until the executive director certifies that the remedial action has been completed in accordance with any such order issued by the commission.

(4) A covenant not to sue a PRP concerning future liability for remediation of a facility may include an exception to the covenant that allows the commission to sue such person where such liability arises out of conditions which are unknown to the executive director at the time he certifies under paragraph (3) of this subsection that the remedial action has been completed at the facility. A covenant not to sue may provide that such future liability may be limited to the same proportion as that established in the original settlement agreement or order issued by the commission.

(f) Any settlement agreement with the commission which resolves a PRP's liability for remediation of a facility does not discharge the liability of any other PRP unless its terms so provide, but it reduces the potential liability of the other PRPs by the amount of the settlement. A PRP will be afforded the opportunity to comment on any settlement agreement with the commission to which it is not a party.

§335.352. Adoption of Appendices by Reference.

The following appendices are adopted by reference. Copies of these appendices may be obtained by contacting the Texas Natural Resource Conservation Commission, Library, P. O. Box 13087, 12118 North IH-35, Austin, Texas 78711-3087, (512) 239-0020.

(1) Appendix I: 40 Code of Federal Regulations (CFR) Part 300, Hazard Ranking System; Final Rule, effective March 14, 1991.

(2) Appendix II: List of basic TNRCC and EPA Technical Guidance Documents, dated December 1, 1994.

Adopted October 11, 1995

Effective December 1, 1995